

Spring 2006

WARSCHAW LECTURE

[This text follows HAW's initial remarks on Judaism and politics/policy]...

I spent 20 years in the Majority in the House of Representatives, and for 16 of those years I chaired the Health and the Environment Subcommittee.

Now I've spent the last 11 years in the Minority.

I can say two things about that...first, the Majority is better!

Second, in both the Majority and the Minority, I've tried to adhere to basic values
[*Transition from Jewish values to governmental values of accountability, openness, honesty.*]

And I have always kept in mind Lord Acton's famous warning that "Power tends to corrupt, and absolute power corrupts absolutely."

Lord Acton was a brilliant historian and an admirer of our democracy's system of checks and balances.

[*Optional: I guess I should also point out, given today's topic, that Lord Acton was Catholic. He was also nearly excommunicated from the Church because he dissented from believing in the Infallibility of the Pope and was critical of the Church's past history.*]

Lord Acton knew that without a careful balance, even a democracy could "breed a new kind of despotism."

He was right. If leaders in Washington lose sight of basic values and assume too much power, it breeds a unique form of arrogance that serves no one well.

On public radio and news shows today, they sometimes have a disclaimer that what you are about to hear may be inappropriate for young audiences or upset the squeamish. I want to give you my version of this warning.

This is not the place for a partisan speech, and I do not intend to be partisan. But I do believe that the leadership of our government – in both Congress and the Executive Branch – has turned away from core values that should be animating public life. And I don't want to pull punches.

So my warning is that I want to talk about honestly and without equivocation about the state of our government and how it relates to core values. I know some of you will disagree. But I think I can be of most service today if I speak with passion from my heart about why I am so concerned about the direction our nation is taking. Then you can

know where I stand and make your own judgments about how much weight to give the conclusions I've reached.

For the last six years, we've essentially had one-party rule in Washington. And for the last decade, the Republican congressional leadership has governed with the idea that a majority of the majority matters more than genuine bipartisanship.

That philosophy, and the unaccountability that can come with one party controlling both the White House and Congress, has created a dangerous mess.

I am the senior Democrat on the House Government Reform Committee and in the late 1990s I watched the Committee's Chairman, Dan Burton, abuse the legitimate investigative tools Congress has to uncover wrongdoing. He was given an unprecedented grant of absolute power to conduct his inquiry into alleged campaign finance violations.

Many in the press denounced the abuses and treated Chairman Burton's efforts as a joke. Norm Ornstein, a leading congressional expert at the American Enterprise Institute, wrote that "the Burton investigation is going to be remembered as a case study in how not to do a congressional investigation and as a prime example of investigation as farce." The Washington Post called the investigation "its own cartoon, a joke, and a deserved embarrassment."

But it was more than that...the investigation was a raw abuse of power that took a deep toll on hundreds of people. It never achieved the infamy of the McCarthy hearings, but from an institutional perspective its damage was just as deep.

The Burton Investigation misused powerfully invasive investigative tools. From the 1950s to 1994, there wasn't a single unilateral subpoena issued by any Committee Chairman, Republican or Democratic. The reason is simple—subpoenas compel Americans to turn information over to the government. It is often a necessary and appropriate step...but if not handled with great care and deliberation, it can be easily abused. That's why having a Committee chairman alone have the power—without debate, a vote, or consensus—is a bad idea.

During Dan Burton's six years as Chairman, he issued over 1000 unilateral subpoenas. Over 1000...no care, no deliberation, no restraint.

In one case, the Chairman mistakenly subpoenaed the bank records of Georgetown University history professor Chi Wang instead of another man named Chi Ruan Wang. Instead of admit the mistake...and keep in mind there was no question this was a mistake and that the Committee's had wrongly obtained an innocent man's records...the Committee's lead investigator told reporters that "Whether Professor Wang deserves a subpoena or not, we haven't decided...we're not sure we made a mistake."

That's as clear an example of an arrogant and unchecked government as I know.

The Burton Committee went on to misuse Congress' powers to depose Americans, grant congressional immunity, and hold government officials in contempt of Congress.

In perhaps the Burton Committee's lowest moment, it actually falsified transcripts to make it seem that Webster Hubbell, a senior Clinton Administration official at the Department of Justice, was saying things he never said.

As Lord Acton said, "Absolute power corrupts absolutely."

Other examples aren't hard to find.

I've never seen a more dishonest legislative process than the one used to pass the Medicare prescription drug bill. Negotiations were behind closed doors. Lobbyists knew more about what was happening than most Members of Congress did. Key estimates about the bill's costs were illegally withheld from Democrats and the public and a government official was told he would be fired if he told the truth about the bill's cost. And when the bill's supporters were short of votes, they actually offered a bribe to a Member of Congress on the floor of the House of Representatives.

Is it any wonder that that law, which senior citizens across America are now trying to make sense of, is convoluted and costing hundreds of billions more than projected?

Six months ago the House Republican leadership decided to pass an energy bill. They rushed a far-reaching bill to the floor without a hearing, without a subcommittee mark-up, and with only one day of committee consideration.

Then the bill was rewritten the night before it reached the floor...only one amendment was allowed to the bill. All others were excluded.

And when the votes were finally counted, the bill was defeated by a 212-210 vote. Except that it wasn't. The Leadership refused to announce the vote until it could force two members to switch their votes.

Even more recently, the House and Senate passed a budget-cutting bill called reconciliation. Every one of us knows—and I hope every American knows—that the only way for a bill to become a law is for the House and Senate to pass identical legislation.

That's the way our system has worked for over 200 years...it's the way the Constitution requires it to work. It can't work any other way.

You just know this is leading to a "but," don't you? Well, here it is.

When it came to budget reconciliation, the House and Senate bills weren't identical. One provision...that cost over a billion dollars...wasn't the same in the House and Senate bills.

What's more, the Congressional Republican leadership realized this before the bill was considered by the House. But they didn't say anything and they didn't fix the problem.

Then the bill went to the President for his signature. He was told hours before he signed the bill into law that the House and Senate passed different versions of the bill. And he signed the bill anyway.

Now lawsuits are pending. But the bigger point is that there is a right way and a wrong way to do things. There is a constitutional way and an unconstitutional way to do things. In this case, the Congressional Leadership consciously chose the wrong way.

And they did it, in part I think, because they don't think there's anything anyone can do about it.

Something has gone wrong...very wrong.

One of my former colleagues, Duke Cunningham, accepted over \$2 million in bribes and had a bribe menu that assigned a specific price for a specific action he would take.

Jack Abramoff, once a super-lobbyist in Washington, is heading to jail, having stolen millions from Indian tribes and weaving a web of corruption that is remarkable in both its depth and breadth.

One of Mr. Abramoff's closest friends, Tom Delay, was until just recently the most powerful Republican in the House. In headier times, Mr. Abramoff flew Congressman Delay to Scotland for a \$70,000 golfing junket. Now two top Delay aides have pled guilty to corruption...Mr. Delay has lost his leadership position and is resigning from Congress...and he is being investigated in both Texas and Washington.

All of us are lost if we lose sight of the difference between right and wrong...and we all invite recklessness if we operate without accountability.

The events of these past few weeks...with American generals speaking out against how the war in Iraq has been waged...have been extraordinary.

The record is sad and clear. There were no weapons of mass destruction...the war has cost hundreds of billions of dollars more than we were told it would...average Iraqis did not greet our troops as liberators...and rebuilding Iraq is neither easy or quick.

Worst of all, our bravest Americans...the men and women we sent into harm's way...often went into battle with the wrong armor and the wrong equipment. Nothing is worse than that...it is an incompetence that kills and maims.

I'm one who voted to authorize force in Iraq. It is easily the vote I regret more than any other I have made. I voted for the Resolution to strengthen the President's hand in finding a peaceful international solution, and because the White House was sure Saddam Hussein had nuclear weapons.

Every day I think about the men and women who have died or been tragically wounded in Iraq. As of this week, 2378 Americans have died; 17,549 troops have been wounded, with many losing arms and legs or suffering irreversible brain damage. And every month the quagmire seems to grow worse.

In an essay in Time Magazine last week, retired Marine Lt. General Greg Newbold...who was the former director of operations for the Joint Chiefs of Staff...summarized the failures of the government's top civilian leadership in Iraq this way:

The distortions of intelligence in the buildup to the war, McNamara-like micromanagement that kept our forces from having enough resources to do the job, the failure to retain and reconstitute the Iraqi military in time to help quell civil disorder, the initial denial that an insurgency was the heart of the opposition to occupation, alienation of allies who could have helped in a more robust way to rebuild Iraq, and the continuing failure of the other agencies of our government to commit assets to the same degree as the Defense Department.

That led Lt. General Newbold to this tragic conclusion:

My sincere view is that the commitment of our forces to this fight was done with a casualness and swagger that are special province of those who have never had to execute these missions—or bury the results.

The Administration's dismal record in Iraq moved the New York Time's Tom Friedman, who strongly supported the war in Iraq, to write an extraordinary column this week.

His column on Wednesday started this way:

If these are only choices, which would your rather have: a nuclear-armed Iran or an attack on Iran's nuclear sites that is carried out and sold to the world by the Bush national security team, with Don Rumsfeld at the Pentagon's helm?

I'd rather live with a nuclear Iran.

While I know the right thing is to keep all our options open, I have zero confidence in this administration's ability to manage a complex strike against Iran, let alone the military and diplomatic aftershocks.

As someone who believed—and still believes—in the importance of getting Iraq right, the level of incompetence that the Bush team has displayed in Iraq, and its

refusal to acknowledge any mistakes or remove those who made them, make it impossible to support this administration in any offensive military action against Iran.

When the American Generals who fought the war and want us to succeed find it necessary to make their views public...when one of the most influential foreign policy thinkers and supporter of the Administration's Iraq strategy concludes the current leadership isn't competent to conduct foreign policy...something is very wrong.

It didn't have to be this way.

But arrogance, secrecy, and unaccountability are a terrible combination.

What we now know is that in the months leading to the war, there was little interest in soliciting different views or assessing information that collided with predetermined conclusions.

There were officials...like General Shinseki...who warned that troop levels were too low...or Larry Lindsey...who warned the war would cost over \$100 billion...who were pushed out the door for giving opinions that conflicted with the official line.

Years of planning and studies were pushed aside and replaced with untested theories and blind faith.

And all of it was done in secret and with no congressional oversight.

In the 1990s I received a fair amount of attention for the investigation I led into the tobacco industry. Some of you may still remember the famous images of the seven tobacco executives testifying before my subcommittee, saying under oath that they didn't believe tobacco killed or that nicotine was addictive.

Some of you may even remember the hearings I led in the 1980s into Union Carbide's deadly Bhopal chemical accident. That oversight not only brought headlines, but eventually resulted in landmark toxic air pollution legislation that made the air safer to breathe for all Americans.

And just last year I teamed up with Tom Davis, the current Chairman of the Government Reform Committee, to investigate the growing use of steroids in professional sports and in high schools and colleges across America. Our work brought attention to the issue and finally forced major league baseball to deal with its steroid scandal.

Oversight is important...if done right, it can find the truth and bring real change.

Congressman Dan Burton proved that no allegation about the Clinton Administration...no matter how ridiculous...was too small to ignore. And the

Republican majority has demonstrated time and again that no issue...no matter how important...has to be faced during the Bush Administration.

And Iraq is the first and best exhibit of that.

There still haven't been any serious hearings on how the intelligence about Iraq's nuclear capability was distorted...no hearings on how and why the White House leaked Valerie Plame's identity as a covert CIA agent when her husband, Joe Wilson, spoke out about false intelligence...and no in-depth investigation into troop levels or the pervasive and corrosive corruption in Iraq's reconstruction.

A Congress of "yes men and women" doesn't serve America. But that's what we've had.

And excessive and inappropriate secrecy doesn't serve American and it doesn't result in good decisions.

In this Administration's first month in office, back in January 2001, they chose secrecy instead of openness.

Vice President Cheney convened a series of secret meetings with Enron, big oil companies, and other special interests to craft a national energy policy. To this day, the Vice President has refused to disclose what the big energy companies asked him for in those closed door meetings.

But that was just the start. In the years since, we've seen unprecedented secrecy.

Last year, Congressional Quarterly, the non-partisan magazine that covers Congress and the White House in close detail, reported that:

the Bush Administration's reluctance...to share information...has become the default position in the post September 11 world. Administration secrecy has become the rule rather than the exception, a phenomenon that lawmakers, journalists, public interest groups and even ordinary Americans say has interfered with their ability to participate in government and to hold it accountable for its actions.

Congressional Quarterly went on to note that "some of the documents the administration has withheld seem to have little to do with the war on terrorism and a lot to do with keeping embarrassing information from the public."

Not only are more documents designated as classified or assigned a pseudo-secret classification...in 2004 alone an estimated 15 million documents were classified...but over the past few years documents that had been released have been pulled back off the shelf and reclassified as secret.

Think about the secrets that we at least now know were being kept secret...wiretapping of Americans...a network of foreign prisons...information about the detainees at Guantanamo Bay...Abu Ghraib...the 9-11 documents that proved the White House had been warned about the use of hijacked airplanes as weapons...the real science behind global warming.

William Jennings Bryan captured the core principle of open and accountable government when he said:

The government being the people's business, it necessarily follows that its operations should be at all times open to the public view. Publicity is therefore as essential to honest administration as freedom of speech is to representative government.

The Freedom of Information Act—or FOIA—is one of the bulwarks of open government. But it's been systematically undermined over the past six years.

Back in 2001, Attorney General John Ashcroft and White House Chief of Staff Andrew Card issued memos that reversed the presumption that information should be disclosed whenever possible. Their message was that giving information to the public may be dangerous and it may harm your country, so withhold whenever you can.

There's a group called Judicial Watch and I have to admit that I rarely agree with their efforts. But the Group's President, Tom Fitton, had it right when he said that when it comes to this White House and secrecy, "I think they forget who they work for sometimes."

Secrecy is toxic to democracy and it brings an insularity to government that inevitably results in disaster.

I'm not suggesting that some information shouldn't be kept secret. Of course it should.

I think most Americans would agree that some government information needs to remain secret for the good of all—our national security demands it.

But I think most Americans would also agree that the decision to keep information secret should be driven by facts, not politics or an obsessive compulsion to hide documents. And my guess is that most Americans want a clear set of standards to be applied consistently on these matters.

But what worries a lot of people...including me...is that the standards aren't clear and they aren't applied consistently.

Next month two former AIPAC officials...Steven Rosen and Keith Weissman...will probably be prosecuted under the obscure 1917 Espionage Act that makes it illegal for

people who are not authorized to receive classified information from sharing it with others.

The facts of this case seem fairly simple: a Pentagon official, Lawrence Franklin, passed on some classified information to the two AIPAC lobbyists. They in turn passed on the information to AIPAC colleagues, Israeli officials, and a reporter.

In short, Mr. Rosen and Mr. Weissman did what reporters do all the time. Even Congressmen and their staffs have been known to receive information from whistleblowers from time to time.

What's never happened before is an attempt by the government to prosecute someone who receives a leak.

Why now? And why these AIPAC lobbyists? And how is this consistent with the White House's own actions in releasing classified information?

Just this month we learned that President Bush and Vice President Cheney instructed Scooter Libby, the Vice President's former Chief of Staff, to leak a classified National Intelligence Estimate to Judith Miller, a New York Times reporter.

They didn't follow normal procedures in declassifying the National Intelligence Estimate...they didn't even tell anyone else in the government that they did it. In fact, it was weeks later that the NIE, as it is known as, was declassified for everyone else.

The White House apparently made up its own rules again in the Valerie Plame case, when it decided to reveal her status as a covert CIA agent.

And when Bob Woodward was writing his book...Bush at War...the White House apparently gave him access to classified documents and "notes taken during 50 National Security Council meetings."

If anyone here can find consistency between the AIPAC prosecution and the White House's own leaks, please share it with me during the question period. I just don't see it.

The absolute corruption of the classification process was exposed early this month by the magazine National Journal.

In a remarkable report, Murray Waas of National Journal detailed how the White House worked to keep information related to the Iraq intelligence issue secret in 2004, despite the fact that there was no legitimate basis to keep it secret.

National Journal reported that:

Karl Rove, President Bush's chief political advisor, cautioned other White House aides in the summer of 2003 that Bush's 2004 re-election prospects would be

severely damaged if it was publicly disclosed that he had been personally warned that a key rationale for going to war had been challenged within the administration.

The story then explained that...contrary to what the White House said publicly in 2004...the President had received an explicit one-page summary in October 2002 that cast doubt on the allegation that Iraq was procuring high-strength aluminum tubes to build nuclear weapons.

You might remember that we learned in 2004 that there was strong dissent in the government about whether the aluminum tubes were the right type for building nuclear weapons. But as Condoleezza Rice said at the time "If there were any doubts about the underlying intelligence to that NIE, those doubts were not communicated to the president, to the vice president, or me."

When the White House declassified a portion of the NIE in July 2004 and reporters spotted a reference in it that raised doubt about the aluminum tube evidence, the White House Communication Director argued that the President had been unaware of the information and that he did "not read the footnotes in a 90-page document." The official, Dan Bartlett, then went on to say "The President of the United States is not a fact-checker."

What we now know, thanks to National Journal, is that this information was not only false, but that the one-page summary was kept secret without any substantive justification.

As the National Journal noted:

In the end, the White House damage control was largely successful, because the public did not learn until after the 2004 elections the full extent of the president's knowledge that the assessment linking the aluminum tubes to a nuclear weapons program might not be true. The most crucial information was kept under wraps until long after Bush's re-election.

This might be smart politics, but it's bad government and a dangerous precedent.

Obsessive secrecy, unaccountability, intolerance of dissent, arbitrary prosecutions, and elevating politics over policy has no place in our democracy. They aren't our values; they aren't our heritage; and they ought not to be our legacy.

I don't know how many of you are familiar with Stuart Taylor, but he is one of the most careful and restrained commentators in Washington. He isn't on the left or the right.

So it certainly got my attention when he noted in this month's Atlantic Monthly that the debate over the Patriot Act had

obscured a far more consequential development: the succession of claims by the Bush administration that the commander-in-chief has near-dictatorial powers to wage war against terrorists, at home as well as abroad—often in secret without public consent.

And I hope it gets your attention too.

Then link back to Judaism topic...